ORDINANCE NO. 196

AN ORDINANCE PROHIBITING THE ESTABLISHMENT OR MAINTAINING OF A NUISANCE; ESTABLISHING A PENALTY THEREFORE; AUTHORIZING A PROCEDURE FOR THE ABATEMENT OF NUISANCES AND ASSESSMENT OF COSTS; PROVIDING ALTERNATE METHODS OF ENFORCEMENT AND REPEALING ORDINANCE NO. 174

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BASEHOR, KANSAS:

Section 1. DEFINITIONS

The following terms used in this Ordinance shall have the following meanings unless the context expressly provides otherwise:

(a) "Trash" shall mean:

(i) Combustible waste including but not limited to paper, cartons, boxes, barrels, wood and wood furniture, bedding, leaves, yard trimmings or tree branches.

(ii) Non-combustible waste including but not limited to metals, tin cans, metal furniture, dirt, rock, brick, ashes, crockery, plastics, street rubbish, broken glass, nails, tacks or other hazardous objects.

(iii) Salvage materials including but not limited to materials obtained from parts from one assemblage to be placed in another, or for the purpose of sale to another as junk or salvage.

(b) "Garbage" shall include but not be limited to organic natural waste normally occurring as a result of the preparation and cooking of food.

(c) "Inoperative motor vehicle" shall mean any motor vehicle not currently registered or tagged pursuant to the applicable state law, or in a condition of being junked, wrecked, wholly or partially dismantled.

(d) "Premises" shall mean any lot, tract or parcel of land.

(e) "Deposit" means to put, place, throw, dump or store upon premises within the City.

(f) "Accumulate" means to store, leave, maintain, retain, or locate upon premises within the City.

Section 2. UNLAWFUL ACT

It is unlawful to deposit or accumulate trash, garbage or inoperative motor vehicles upon premises in the City for an inordinate length of time or become offensive constituting a hazard to the public health, and the same is hereby declared to be a nuisance.

Section 3. ENFORCEMENT PROCEDURE

(a) By the Police. This ordinance may be enforced by complaint issued and served by the Chief of Police, or a duly authorized officer, after reasonable inquiry and inspection of the premises and the act which is declared or charged to be unlawful, provided, that no complaint shall be issued unless it specifies:

(i) The premises upon which the alleged unlawful act occurred;

(ii) The person or persons allegedly responsible for such unlawful act; and

(iii) The nature of the alleged unlawful act with specification of the trash, garbage or inoperative motor vehicle whose deposit or accumulation constitutes the unlawful act.

(b) By the Public. This ordinance may be enforced by two written public complaints filed with the City Clerk, which allege the same unlawful act.

(i) Notice. Upon receiving the two public complaints, the Chief of Police or duly authorized officer shall make a reasonable inquiry and inspection of the premises to determine if there is reasonable cause to

believe that such an unlawful act is occurring, and if so, shall cause a letter to be written and delivered to the person accused of the unlawful act. The letter shall be specific in the manner set out in subparagraph (a), shall be signed by the Chief of Police or a duly authorized officer and delivered by mail with showing of proof thereof. The letter shall also notify the accused that unless the alleged unlawful condition is removed or the accused person requests a hearing as set out in paragraph b(iii) of this section, a complaint will issue.

(ii) Complaint. Unless the unlawful condition is removed or the accused person requests a hearing before the City Council as set out in paragraph b(iii), a complaint will be issued by the Chief of Police or a duly authorized officer as set out in paragraph (a) of this Section.

(iii) Hearing. If the accused person requests a hearing before the City Council upon the notice issued pursuant to this Section within ten (10) days of the issuance and mailing of the notice, the City Clerk shall promptly notify the accused person of the time and place of such hearing. Such request must be in writing, and failure to request such a hearing within the time specified shall be deemed to be a waiver of the right to a hearing. The accused person may be represented by counsel and present witnesses and testimony in his behalf. A majority of the City Council will constitute a quorum for the hearing referred to in this section. Adherence to the formal rules of

evidence need not apply. At the conclusion of the hearing the City Council will vote to determine whether sufficient and probable cause exists to issue a complaint pursuant to the procedure set out in paragraph (a) of this Section.

Section 4. ABATEMENT AND REMOVAL OF NUISANCE

If a complaint is issued alleging an unlawful act in violation of this Ordinance, the City Council may, pursuant to this subsection by resolution, direct the abatement and removal of the condition causing violation. Such abatement shall be in addition to or in lieu of any other procedures or penalties as a result of a complaint issued pursuant to this section. After a complaint has been issued pursuant to Section 3 and the accused has neither requested a hearing before the City Council nor abated the unlawful condition, the City Council may, by resolution, direct the Chief of Police, a duly authorized officer or another person to remove the trash, garbage or inoperative automobile or other material causing the unlawful condition. The property so removed may be stored by or at the direction of the City Council or Chief of Police at such place or places as they may deem proper.

Section 5. COSTS AND EXPENSES

All costs and expenses reasonably incurred by the City, including but not thereby excluding, labor, material, storage and administrative including legal expenses shall be assessed against the person causing the same as provided by law.

Section 6. PENALTY

Should a person be found guilty of committing an Unlawful Act as defined in Section 2, such person shall be fined no less than $20.00 nor greater than $200.00 or be imprisoned no more than 30 days, or be both fined and imprisoned. Each day that such an Unlawful Act occurs may be considered as a separate offense.

Section 7. RIGHT OF ENTRY

Whenever it is necessary to make an inspection to enforce any of the provisions of this Ordinance or whenever the Chief of Police or a duly authorized officer has cause to believe any condition exists which may violate this Ordinance, he may enter the premises at all reasonable times such as not to unduly disturb the residents or contents thereof, provided that there shall be no right of entry into a building pursuant to this section unless a warrant has been issued.

Section 8. STORAGE AND DISPOSAL OF PROPERTY

In the course of abatement of a nuisance pursuant to this ordinance, the Chief of Police or a duly authorized officer are hereby empowered to take the property causing the unlawful act into their possession and store such property at such premises as they may, in their discretion, choose. If the property has no ascertainable value, the property may be disposed. If the property so held is reasonably of ascertainable value, in the discretion of the Chief of Police or a duly authorized officer, the owner of the property, if the owner can be reasonably ascertained, or the person apparently responsible therefore shall be given notice by mail at such person's last known address with certificate of such mailing, that such property will be stored for thirty (30) days, subject to being claimed. If the items are not then claimed within thirty (30) days, the city may sell the items and deduct its expenses, or dispose of the property as it may desire.

Section 9. REPEAL AND CONSTRUCTION

This ordinance repeals ordinance number 174. This ordinance shall not be construed as repealing any other ordinances, and should be construed to be in addition and complementary to the other ordinances of the City of Basehor.

Section 10. SEPARABILITY CLAUSE

If any part of this ordinance is for any reason held invalid, illegal or unconstitutional by decision of any court

or tribunal, such decision shall not affect the validity of the remaining parts of the ordinance.

Section 11. EFFECTIVE DATE

This ordinance shall take effect upon enactment by the City Council of the City of Basehor, Kansas and its publication in the official city newspaper.

Passed by the City Council of the City of Basehor, Kansas this 5th day of November, 1985.

Approved by the Mayor this 5th day of November, 1985.

Anna M. Landarver
Mayor

Attest:

Mary A. Magle
City Clerk